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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0090]

[Docket 2012-0076; Sequence 71]

Federal Acquisition Regulation;

Information Collection; Rights in Data and Copyrights

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning rights in data and copyrights.

DATES: Submit comments on or before **[Insert date 60 days after publication in the Federal Register.]**

ADDRESSES: Submit comments identified by **Information Collection 9000-0090, Rights in Data and Copyrights**, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a

Comment" that corresponds with "Information Collection 9000-0090, Rights in Data and Copyrights". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0090, Rights in Data and Copyrights" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW, Washington, DC 20405.
ATTN: Hada Flowers/IC 9000-0090, Rights in Data and Copyrights.

Instructions: Please submit comments only and cite Information Collection 9000-0090, Rights in Data and Copyrights, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, Contract Policy Branch, GSA (202) 501-0136 or email marissa.petrusek@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 27.4, Rights in Data and Copyrights is a regulation which concerns the rights of the Government and contractors with whom the Government contracts, regarding the use, reproduction,

and disclosure of information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to ensure that data developed with public funds is available to the public. The specific clauses associated with this information collection are as follows:

(1) FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software. This clause is included in solicitations if the contracting officer requires an offeror to state whether limited rights data or restricted computer software are likely to be used in meeting the requirements. FAR 52.227-15 requires the contractor to identify whether data proposed for fulfilling the requirements is limited to data rights or restricted software. If the government does not receive unlimited rights, the contractor must provide a list of the data not covered. This information is submitted with a contractor's proposal to the Government. The Government uses the information to identify when there are only limited data rights or restricted software rights.

(2) FAR 52.227-16, Additional Data Requirements. This clause is included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less). The

clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract.

FAR 52.227-16 allows the Government to require delivery of data not initially asked for at anytime during the contract and up to three years after completion. All data covered by this clause is paid for by the Government. FAR 52.227-16 also requires a record-keeping burden from the contractor to maintain data first produced or specifically used in performance of the contract within three years after acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to ensure that the Government can fully evaluate the research in order to ascertain future activities and to ensure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information.

When FAR 52.227-16 was first proposed, comments were received from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unreasonable because investigators do not segregate their research by contract, but rather combine it with other data to continue their research. In light of this, a \$500,000 threshold was adopted after surveying the major civilian R&D agencies, whose data suggested that the average value of an R&D contract ranged between \$250,000 to \$300,000; commensurate with other clause thresholds (e.g., small business subcontracting). Thus, for most R&D contracts with universities, no recordkeeping is required.

(3) FAR 52.227-17, Rights in Data-Special Works. This clause is included in solicitations and contracts primarily for production or compilation of data. FAR 52.227-17 is used in rare and exceptional circumstances to permit the Government to limit the Contractor's rights in data by preventing the release, distribution and publication of any data first produced in the performance of the contract. This clause may also be limited to particular items and not the entire contract.

(4) FAR 52.227-18, Rights in Data-Existing Works. This clause is included in contracts for audiovisual or similar works. FAR 52.227-18 is used when the Government is acquiring existing audiovisual or similar works, such as books, without

modification. This clause requires contractors to grant license for the Government to reproduce, prepare derivative works, and perform or display the materials publically.

(5) FAR 52.227-19, Commercial Computer Software License. This clause is used in contracts and purchase orders for the acquisition of commercial software. FAR 52.227-19 requires the Government to set forth the minimum data rights it requires above and beyond what is set forth in the contractor's standard commercial license. The contractor is responsible for affixing a notice on any commercial software delivered under the contract that provides notice that the Government's rights regarding the data are set forth in the contract.

(6) FAR 52.227-20, Rights in Data - SBIR Program. This clause is only required for small business innovation research (SBIR) contracts and it limits the Government's rights to disclose data first produced under the contract.

(7) FAR 52.227-21, Technical Data Declaration, Revisions and Withholding of Payment - Major Systems. This clause requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract.

(8) FAR 52.227-22 Major Systems - Minimum Rights. This clause is used in Civilian Agency Contracts, except for NASA and Coast Guard, providing the Government unlimited rights in any

technical data, other than computer software, developed in the performance of the contract and related to a major system or supplies for a major system. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will require this certification.

(9) FAR 52.227-23, Rights to Proposal Data (technical). This clause allows the Government to identify pages of a proposal that, as a condition of contract award, would be subject to unlimited rights in the technical data.

(10) FAR 52.227-14, Rights in Data-General. Paragraph (d) outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public and no information collection associated with this clause.

B. Annual Reporting Burden

A reassessment of the rights in data and copyright provisions was performed. Based on the comprehensive reassessment performed, this information collection requirement represents a decrease from what was published in the Federal Register at 75 FR 27782 on May 18, 2010. The decrease is most likely a result of increased use of Governmentwide contracts including the GSA Federal Supply Schedule contracts, an increased use of commercial

products since the inception of the clauses, and budget constraints over the last several years that have reduced research and development budgets and the ability to purchase costly data rights.

There is no centralized database in the Federal Government that maintains information regarding the use of rights in data and copyright clauses. Subject matter experts in the intellectual property law field were consulted to obtain additional information that helped in estimating the revised public burden. FedBizOpps was searched to determine the use of these clauses in competitive contract solicitations throughout the Government. The Federal Procurement Data System (FPDS) was used to determine the likely contracts that would contain rights in data and copyright provisions. An assumption was made that sole source contracts citing the existence of limited rights in data, patent rights, copyrights or secret processes would contain the rights in data and copyright clauses, and were used as the basis for this information collection. Consequently, the FPDS data formed the basis for the estimated the number of respondents per year based on the likely contracts awarded that would include the applicable clauses associated with this collection (52.227-15 through 52.227-23). The estimated number of contracts was then totaled to determine the overall number of respondents associated with this collection. Estimates were based on the total number

of unique contractors awarded a sole source contract based on the existence of limited rights in data, patent rights, copyrights or secret processes. Similarly, FPDS data was used to estimate the number of responses per respondent for this collection. The estimate was based on the average number of actions per contractor and rounded to the nearest whole number. The estimates were then averaged to determine the overall number of responses per respondent associated with this collection. One burden hour was estimated per response to read and prepare information. No public comments were received in prior years that have challenged the validity of the Government's estimate.

Respondents: 419

Responses Per Respondent: 2.76.

Annual Responses: 1,156.

Hours Per Response: 1.

Total Burden Hours: 1,156.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows:

Recordkeepers: 446.

Responses: 5.

Annual Response: 2,230.

Hours Per Recordkeeper: 2.

Total Recordkeeping Burden Hours: 4,460.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 9000-0090, Rights in Data and Copyrights, telephone (202) 501-4755. Please cite OMB Control No. 9000-0090, Rights in Data and Copyrights, in all correspondence.

Dated: July 18, 2013

Karlos Morgan,
Acting Director
Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

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